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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALDON ARELLANO AVILA,

Defendant and Appellant.

B217736

(Los Angeles County
Super. Ct. No. A145097)

APPEAL from an order of the Superior Court of Los Angeles County, Michael J. O’Gara, Judge. Affirmed.

Jonathan P. Milberg, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Aldon Arellano Avila appeals from the trial court's order denying his petition for a writ of error coram nobis. We affirm the trial court's order.

FACTUAL AND PROCEDURAL BACKGROUND

In June of 1980, an information was filed accusing Avila of committing five armed robberies. All of the robberies were committed on the same day, just before Avila's 18th birthday. Over a 70-minute period, Avila used a gun to rob five individuals in a Winchell's Donut Mart and a 7-11 Store.

On October 7, 1980, Avila entered into an agreed-upon disposition under the terms of which he would admit three of the robberies and, in exchange, be committed to the California Youth Authority for a period not to exceed six years. Any remaining counts or allegations would be dismissed.

Avila was paroled in 1985, then subsequently found to be in violation of parole. He was discharged from parole in 1987.

Between 1987 and 1999, Avila was convicted of a number of misdemeanor offenses, such as battery and vandalism. Then, in April 1999, Avila sold \$40 worth of cocaine to an undercover police officer. In May 1999, an information was filed alleging Avila sold a controlled substance in violation of Health and Safety Code section 11352, subdivision (a). It was further alleged that Avila had suffered three prior serious felony convictions pursuant to Penal Code section 667, subdivision (a) and the Three Strikes law (Pen. Code, §§ 667, subds. (b)-(i) & 1170.12, subds. (a)-(d)). A jury found Avila guilty of the substantive offense and the trial court found true the alleged prior convictions. In response to Avila's motion, the trial court struck one of the three prior convictions pursuant to Penal Code section 1385. In accordance with the Three Strikes law, the trial court sentenced Avila to a term of 25 years to life in prison.

In an opinion filed October 19, 2000 in case No. B138413 (*People v. Avila* [nonpub. opn.]), this court rejected Avila's contentions that the trial court abused its Penal Code section 1385 discretion when it chose to strike only one of his prior felony convictions. In addition, this court held that punishment of 25 years to life was not unconstitutionally cruel and unusual.

On June 13, 2009, Avila filed a petition for writ of error coram nobis, asserting that the trial court erred by relying on his prior juvenile adjudications of armed robbery as “strikes.” Citing several cases, including *People v. Garcia* (1999) 21 Cal.4th 1 and *People v. Fowler* (1999) 72 Cal.App.4th 581, on July 8, 2009, the trial court denied the writ petition.

Avila filed a notice of appeal from the trial court’s order on July 21, 2009.

This court appointed counsel to represent Avila on appeal on October 28, 2009.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed November 24, 2009, the clerk of this court advised Avila to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. On December 28, 2009, Avila filed a “Supplemental Brief.” In his brief, Avila appears to be arguing that the robberies, which were committed when he was 17 years old, should not count as “strikes” under the Three Strikes law.

DISCUSSION

“[Penal Code] Section 667, subdivision (d)(3) provides as follows: [¶] ‘A prior juvenile adjudication shall constitute a prior felony conviction for purposes of sentence enhancement if: [¶] ‘(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense. [¶] ‘(B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) [subdivision (d)(1) of section 667] or (2) [subdivision (d)(2) of section 667] as a felony. [¶] ‘(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law. [¶] ‘(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.’ ” (*People v. Garcia, supra*, 21 Cal.4th at pp. 4-5, fn. omitted.)

The *Garcia* court noted that “Paragraph (B) disjunctively cross-references three statutory lists of offenses: the list in Welfare and Institutions Code section 707(b), . . . ; the list of ‘serious’ offenses in [Penal Code] section 1192.7, subdivision (c); and the list of ‘violent’ offenses in [Penal Code] section 667.5, subdivision (c). The latter two lists delineate, through cross-referencing in subdivision (d)(1) and (2) of [Penal Code] section 667, the set of offenses that qualify as strikes when they are the subject of a prior adult conviction.” (*People v. Garcia, supra*, 21 Cal.4th at p. 5.) In determining the meaning of these statutory sections, the *Garcia* court “adopt[ed] an interpretation that harmonize[d] paragraphs (B) and (D) [of Penal Code section 667, subdivision (d)(3)] In brief, [the court] interpret[ed] paragraph (B) as setting out the list of prior juvenile offenses that will qualify as strikes and paragraph (D) as requiring, in addition, that in the prior juvenile proceeding giving rise to the qualifying adjudication the juvenile [had] been adjudged a ward of the court because of a Welfare and Institutions Code section 707(b) offense, whether or not that offense is the same as the offense currently alleged as a strike.” (*Garcia*, at p. 6; see *People v. Fowler, supra*, 72 Cal.App.4th at pp. 585-586.)

In the present case, Avila was found to have committed three armed robberies. Robbery is listed in Welfare and Institutions Code section 707, subdivision (b)(3), Penal Code sections 667.5, subdivision (c)(9) and 1192.7, subdivision (c)(19). On October 7, 1980, Avila was declared a ward of the court and was committed to the California Youth Authority for his commission of the robberies. Under these circumstances, the trial court properly relied on the robberies as strikes for purposes of imposing sentence under the Three Strikes law.

APPELLATE REVIEW

We have examined the entire record and are satisfied counsel has complied fully with counsel’s responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The order denying the petition for writ of error coram nobis is affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.